

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



“BUY CALIFORNIA”
MARKETING AGREEMENT

Effective October 17, 2001
Incorporating Amendments through July 6, 2003

BUY CALIFORNIA MARKETING AGREEMENT

ARTICLE I

STATEMENT OF AGREEMENT

WHEREAS, it is provided in Section 58745 of the California Marketing Act, being Chapter 1, Part 2, Division 21 of the Food and Agricultural Code of the State of California, as follows:

58745. In order to effectuate the declared policy of this chapter, the Department may also, after due notice and opportunity for hearing, enter into marketing agreements with processors, distributors, producers, and others that are engaged in the handling of any commodity, which regulate the preparation for market and handling of such commodity. Such marketing agreements are binding upon the signatories to the agreements exclusively.

WHEREAS, in order to tend to effectuate the declared policy and purposes of said Act, the parties hereto desire to enter into a marketing agreement under the provisions of said Act. The purposes of this Marketing Agreement are:

1. To increase awareness and consumption of California agricultural products (generic and branded) among California consumers.
2. To create a multi agricultural product generic marketing campaign revolving around development of a California identity that depicts quality and encourages increased consumer purchase;
3. To use the California identity to create a point of differentiation for retailers and consumers;
4. To create a multifaceted campaign that reaches consumers with California identity messages in the many places they get information about food, health, nutrition, and lifestyle;
5. To fund research as needed to develop and evaluate said program;
6. To have most organized California agricultural products involved in the program by 2005.

NOW, THEREFORE, the parties agree as follows:

ARTICLE II

DEFINITIONS

Section A. DEFINITION OF TERMS. These definitions apply only to the Signatories to this Agreement:

1. “Act” means the California Marketing Act, being Chapter 1, Part 2, Division 21 of the Food and Agricultural Code.

2. “Buy California Marketing Agreement” or “Agreement” refers to this Marketing Agreement, directly affecting industry organizations of California agricultural products, which is issued by the Department pursuant to the provisions of the Marketing Act.

3. “California agricultural products” mean the products of California farms and ranches and the items marketed from these products, whether fresh, dried or otherwise processed.

4. “Books and Records” means any approved budgets, invoices, cancelled checks, aggregate commodity statistics and any other documents, computerized data, and other writings, whether handwritten, typewritten, printed, Photostatted, copied, or electronically stored to verify assessments paid to the agreement.

5. “Buy California Board” and “Board” are synonymous and mean the Board established pursuant to the provisions of Article III of this Agreement.

6. “Retailer” means any person that engages in the operation of selling, marketing, or distributing agricultural products whether as owner, agent, employee, broker, or otherwise.

7. “Fiscal Year” and “Marketing Season” are synonymous and mean the period beginning July 1 of any year and extending through June 30 of the following year.

8. “Agricultural Product Organization” means any state or federally mandated promotion program or any nonprofit California agricultural organization with relevant expertise that is willing to represent growers and/or processors in the state of California in a generic fashion.

9. “Market” or “Marketing” is synonymous with promotion and means to promote agricultural products with the intent of increasing retail purchase and/or promotion and consumer purchase and consumption.

10. “Department” means the Department of Food and Agriculture of the State of California.

11. “Signatory” means any person who has signed this Agreement.

12. "Research" means any type or combination of research including but not limited to consumer, trade, marketing, media, scientific, and econometric research needed for analysis purposes in the development or evaluation of individual program components or the program as a whole.

13. "Retail Promotion" means any activity designed to motivate retailers to carry and promote California product more often. Promotion includes but is not limited to developing customized promotions with retail chains, use of tagged advertising as an incentive, use of incentive programs such as but not limited to sales contests and training programs, development and distribution of point-of-purchase materials, development of consumer education materials for distribution at point of purchase, sponsorships of consumer programs, and sharing of research.

14. "Multifaceted Campaign" means any combination of consumer education, health/nutrition education or promotion, food safety or food handling programs, public relations, media outreach, merchandising, promotion, advertising, or community service projects that reach consumers with the California identity message.

15. "California identity message" means any message or combination of messages deemed by the board to have the power to motivate the purchase, consumption, use and promotion of California agricultural products.

16. "Consumer" means all individuals who purchase California-grown agricultural products within the state, including purchasers of California agricultural products used as components of processed products.

ARTICLE III

BUY CALIFORNIA BOARD

Section A. ESTABLISHMENT AND MEMBERSHIP.

1. To assist the Department in the administration of this Agreement, an Advisory Board, to be known as the Buy California Board, is hereby established. The Board shall consist of one representative member from each signatory organization. For the purposes of board representation, organizations representing fresh, dried, and other processed forms of any agricultural product shall be considered individually eligible for board membership. No agricultural product shall be represented by more than one signatory organization. For example, fresh bananas and dried bananas would be considered two distinct products and, as such, may be represented on the board by individual organizations, or each product may be represented by the same organization. (Amended 7/6/03)

2. A Signatory of record shall not be represented on the Board in more than one (1) voting position. A signatory may designate an alternate in his/her absence.

3. In addition to the members, and upon the recommendation of the Board, the Department may appoint one member to the Board to represent the general public. The public member shall not be affiliated with any organization engaged in the commercial production, handling, or marketing of any agricultural product and shall have all the rights and privileges, including voting, of any other member of the Board.

4. The term of office of the members of the Board shall be three years beginning May 1 of every year and continuing through April 30 of the third year following their appointment, or until their successors have been appointed and have qualified.

Section B. APPOINTMENT PROCEDURE FOR MEMBERSHIP TO THE BOARD

Nominations of persons eligible to serve initially on the Board shall be received at the initial time of California agricultural product organization sign up. Board members shall be appointed by the Department. Members shall serve until their successors have been appointed and qualified.

All signatories to this agreement shall always be entitled to one seat and one alternate on the Board. (Amended 7/6/03)

Section C. VACANCIES

To fill any vacancies occasioned by the failure of any person appointed as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be appointed from designee/s received from the signatory whose representative can no longer serve.

Section D. DUTIES AND POWERS OF BOARD

The Board shall have the following duties, which may be exercised subject to the approval of the Department:

1. To administer the provisions of this Agreement;
2. To recommend to the Department rules and regulations relating to this Agreement;
3. To receive and report to the Department complaints of violations of this Agreement;
4. To recommend to the Department amendments to this Agreement;
5. To assist the Department in levying and collecting of assessments from signatories to cover expenses incurred by the Board and the Department in the administration of this Agreement;

6. To assist the Department in seeking federal funds to support this program;
7. To assist the Department in compiling and creating the annual report to the legislature, as required in Section 58750(c) of the Food and Agricultural Code;
8. To assist the Department in collection of such information and data as may be deemed necessary to the proper administration of this Agreement and the Act;
9. To select a chair from its membership and to select such other officers recommended to the Department for adoption as the Board may deem advisable;
10. To keep minutes, books, and records, which will clearly reflect all of its acts and transactions. Such minutes, books, and records shall at all times be subject to examination by the Department or duly authorized representatives, and to provide to the Department copies of the minutes of all meetings duly certified by an authorized officer of the Board;
11. To employ such employees or contractors, including private legal counsel when authorized, as it may deem necessary and to determine the compensation and define the duties of such employees;
12. To recommend to the Department such committees as may be deemed necessary to assist the Board and the Department in performing the duties authorized pursuant to this Agreement. Said committees may include nonvoting advisory committees from related industries such as retail and foodservice. All Committee actions shall be recommendations to the Advisory Board, subject to approval by the Department;
13. To receive, invest, borrow, and disburse funds pursuant to the provisions of Article 10 of the California Marketing Act, part of which clearly authorizes the board to establish and manage its own bank accounts which are outside of the State Treasury system; and
14. To comply with all applicable conflict of interest laws.

Section E. EXPENSES OF MEMBERS OF THE BOARD

The members and alternates of the Board may be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder. The board will develop policies for appropriate expense reimbursement, as authorized by the Marketing Act.

Section F. PROCEDURE FOR BOARD

1. A quorum of the Board shall consist of a majority of eligible voting members, including the public member as one, if that position is filled.

2. Any action taken by the Board shall require the concurring vote of a majority of the eligible voting members present.

3. Any question before the Board which would, in the opinion of the Board member, result in a conflict of interest on his or her part shall be the basis of the member disqualifying himself or herself from voting on such a question.

Section G. LIMITATION OF LIABILITY OF BOARD

Pursuant to Section 58847 of the California Marketing Act, the members of the Board, including employees of the Board, are not responsible individually in any way whatsoever to any person for liability on any contract or agreement of the Advisory Board approved by the Department.

ARTICLE IV

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS

Signatories to this Agreement shall maintain Books and Records reflecting their operations and shall furnish to the Department or its duly authorized or designated representatives such Books and Records as may, from time to time, be requested relating to their operations under this Agreement, and shall permit the inspection, during normal business hours, by said Department or authorized representatives of such portions of their Books and Records as they relate to operations that are the subject of this Agreement.

Section B. CONFIDENTIAL INFORMATION

Any proprietary information obtained by any persons pursuant to the provisions of this Article, including but not limited to, data related to shipments and promotion results which are obtained from retailers, shippers, and other promotion partners, shall be confidential and shall not be disclosed except when required in a judicial proceeding.

ARTICLE V

ADVERTISING AND PROMOTION

In carrying out the purposes of this Marketing Agreement, the Board may create an advertising and/or promotion program designed to increase awareness and consumption of California agricultural products among California consumers. Said program may involve multiple California agricultural products, shall be generic in nature, and shall revolve around development of a California identity message in an effort to prompt increased consumer

purchase. The program intent is to use the California identity to create a point of differentiation for retailers and consumers. Activities of the program may include, but are not limited to: advertising, merchandising, sales and consumer promotion, consumer education, media outreach, marketing and scientific research, health promotion, and public relations.

ARTICLE VI

BUDGETS, INDUSTRY ASSESSMENTS, AND CONTRIBUTIONS

Section A. BUDGETS

For each Fiscal Year, the Board shall recommend to the Department a budget or budgets to cover proposed expenditures for the administration of this Agreement and for the activities authorized hereunder. Upon approval of such budget or budgets, the Board may incur expenditures in accordance therewith.

Section B. ASSESSMENTS

1. States and Federal Fund Support. The Agreement may receive funding from the California General Fund and federal government funds to conduct programs.

2. Rate of Assessment. Each participating signatory shall directly contribute an industry assessment, or contribution, on an annual basis. Each signatory's direct contribution shall be determined based on a five-year average value of the crop the organization represents. Said value to be based on verifiable government statistics. The board shall develop procedures, including frequency of payments, for collecting industry contributions. A cap of \$50,000 shall be imposed on individual agricultural product contributions required for the initial year. The board will have the authority to raise the assessment cap after the initial year and individual agricultural products will have the authority to assess themselves a higher rate from the initial year on.

Assessment range for signatories representing a single agricultural product is based on the five-year average value of the product as follows:

Less than \$100 million	\$7,500
\$100 to 250 million	\$15,000
\$250 to 500 million	\$25,000
\$500 to 750 million	\$35,000
\$750 million to \$1 billion	\$45,000
More than \$1 billion	\$50,000

In addition to required contribution, the board will have the authority to allow signatory organizations to financially support individual board-approved projects. This additional funding is not required of signatories, is not included in calculating the cap, and may not be used to offset the required contribution.

In order to extend the Program, in addition to the required contribution and the project-specific funding opportunities, all signatories will be encouraged to utilize existing budgets, programs and media campaigns to carry the Buy California message to California based retailers and consumers, whenever appropriate for the promotion of their product. Signatories will be required to provide annual summaries to the Board of the funding and in-kind contributions allocated from their own budgets for in-state promotion of California-grown agricultural products to California consumers, thus extending the program. Those contributions shall constitute part of the contributions to verify industry co-funding of the program.

Retail partners will also be encouraged to provide summaries of the ways in which they extended the program by carrying the message to California consumers in-store, in ads, and in special promotions. Said summaries should include calculations of the dollar value of their contributions. Those contributions shall constitute part of the contributions to verify industry co-funding of the program.

All other partners with whom the Board works will be asked to summarize and calculate the value of their contributions.

The assessment for signatories that represent more than one agricultural product is the combined assessment of each of the individual agricultural products. For example, if the signatory organization is representing kumquats, which have a five-year annual average value of \$75 million, and bananas, which have a five-year annual average value of \$260 million, the assessment would be \$32,500 ($\$7,500 + \$25,000$).

3. Should a new signatory join mid-year, that contribution would be prorated for the time remaining of the fiscal year and the contribution would be added to that already committed.

Section C. DISPOSITION OF FUNDS

1. Any monies collected by the Board pursuant to the provisions of this Agreement shall be deposited in accordance with the provisions of the Act, allocated to this Agreement and disbursed only for the necessary expenses incurred or approved by the Department with respect to this Agreement.

2. Any monies remaining from assessments, collected pursuant to this Agreement, upon recommendation by the Board and approval by the Department, may be refunded at the close of any Marketing Season upon a pro rata basis to all Signatories from whom such assessments were collected; or such monies, upon recommendation of the Board and approval by the Department, may be carried over in reserve into the next succeeding Marketing Season.

ARTICLE VII

APPEALS

Section A. APPEALS

Any Signatory to this Agreement may petition the Department to review any order, recommendation, or action of the Board approved by the Department. Any such appeal shall be conducted pursuant to the Grievance Procedures as detailed in the Marketing Branch Policy Manual, Policy M118, and Appendix M.

ARTICLE VIII

PARTICIPATION

Section A. NEW SIGNATORIES AND PARTICIPATION

Agricultural product organizations may become signatories to this Agreement during the period of time that the Department designates as the initial assent period by filing with the Department a properly executed copy of this Agreement and thereupon shall immediately become subject to the rights, duties, privileges, and immunities provided for in this Agreement. Additional agricultural product organizations may become signatories to the Agreement by filing with the Department a properly executed copy of this Agreement, at any time.

Section B. WITHDRAWAL FROM PARTICIPATION

Release from the Agreement may be obtained, provided that a Signatory is not in violation of the provisions of this Agreement and has fulfilled all of his or her obligations, including payment of any assessments or charges levied or imposed pursuant to this Agreement, under any of the following conditions:

1. By filing with the Department a written request for withdrawal no less than 60 days prior to the end of the then current Marketing Season, with the release to become effective at the beginning of the succeeding Marketing Season.
2. Immediate withdrawal may be effected when a Signatory ceases to be an active agricultural product organization and gives notice thereof to the Board in writing.
3. The Department may terminate this Agreement with respect to any Signatory for cause as set forth in Article X hereof.

ARTICLE IX

COMPLIANCE OF CONTRACTING PARTIES

Section A. AGREEMENT TO COMPLY

Each Signatory to this Agreement hereby agrees to be bound by and to comply with all the provisions of this Agreement, the California Marketing Act, and all relevant rules and directives from the department.

Section B. RIGHT OF INJUNCTION

In the event of a violation or threatened violation of this Agreement, or any rule or regulation made effective hereunder, the Department may request the Attorney General of California to file an action in the Superior Court of this State for an injunction.

Upon compliance with Section 527 of the Code of Civil Procedure of the State of California, the Court may issue a temporary restraining order and preliminary injunction as in other actions for injunctive relief; and upon trial of such action, if judgment be in favor of the plaintiff, the court shall permanently enjoin the defendant from further violations.

ARTICLE X

SEPARABILITY

Section A. SEPARABILITY

If any section, sentence, clause or part of this Agreement is for any reason held to be invalid, or the applicability thereof to any person, circumstance, or thing is held to be invalid, such decision shall not affect the remaining portions of this Agreement, and the invalid provision shall be reformed, if legally possible, so as to effectuate the intent of the provision to the maximum extent permissible by law.

ARTICLE XI

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME

This Agreement shall become effective on the date specified by the Department, and upon notification to the parties hereto in accordance with the provisions of Section 59111 of the Act shall continue in effect until suspended or terminated by the Department, or by operation of law, in accordance with the provisions of the Act. At least once each five years a public hearing shall be held to determine whether the Agreement shall be continued. If the Department finds after the public hearing that the Agreement is effectuating the purposes of the Act, it shall continue the Agreement.

Section B. TERMINATION

The Department shall suspend or terminate this Agreement or any provision hereof whenever it finds that the Agreement does not tend to effectuate the declared purposes of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION OR AMENDMENT

Unless otherwise expressly provided in the notice of amendment, suspension, or termination, no amendment, suspension, or termination of this Agreement shall either (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provision of this Agreement not so amended, suspended, or terminated; or (b) release, condone, or dismiss any violation of this Agreement occurring prior to the effective time of such amendment, suspension or termination; or (c) affect or impair any rights or remedies of the Department or of any person with respect to such violation; or (d) affect any liabilities pursuant to the provisions of this Agreement.
